

Calendar No. 1057

91ST CONGRESS }
2d Session }

SENATE

{ REPORT
No. 91-1052

COMDR. JOHN W. McCORD

JULY 30, 1970.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 2481]

The Committee on the Judiciary, to which was referred the bill (H.R. 2481) for the relief of Comdr. John W. McCord, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to relieve Comdr. John W. McCord of Santa Ynez, Calif., of all liability to the United States in the amount of \$4,724.87, in the period from June 4, 1948, through August 26, 1966, as the result of administrative error in establishing his pay entry base date.

STATEMENT

The Department of the Navy in its report to the House Judiciary Committee on the bill states that it would interpose no objection to its enactment.

The Comptroller General in a report in behalf of the General Accounting Office stated that while its policy is to question relief extended to individuals, it would recognize that the question of whether relief should be granted in this case is a matter of determination by the Congress.

The overpayment which is the subject of this bill occurred because of an error in fixing the pay entry base date at the time the individual began active duty as an officer on June 4, 1948. The error was not discovered until more than 18 years had passed. Comdr. John W. McCord had previously served as an enlisted man in the Naval Reserve from September 16, 1942, to June 22, 1944, a period of 1 year, 9 months, and 7 days. He attended the U.S. Naval Academy from June 23, 1944, to June 3, 1948. When he entered active duty as an officer on June 4, 1948, Commander McCord's pay entry base date should have been established as August 27, 1946. However, through administrative error, his pay entry base date was erroneously established as January 11, 1945.

This error was not discovered until Commander McCord requested transfer to the retired list upon completion of 20 years' service. As a result of the error, Commander McCord had received overpayments of active duty compensation, amounting to \$4,724.87.

Although the total overpayment in this case is a substantial sum, it is one which was built up over a period in excess of 18 years. The overpayment apparently was the result of administrative error and Commander McCord's mistaken belief that his pay entry base date had been correctly established upon his graduation from the U.S. Naval Academy and his entrance on active duty as a commissioned officer. Information available to the Department of the Navy affords no reason to believe other than that Commander McCord was acting in good faith in this belief and that the overpayments were without fault on his part. Further, he is supporting his family which includes eight children and repayment would be a hardship.

The committee has concluded that the facts outlined above and as stated in the departmental report justify legislative relief in this instance. The committee has reached this conclusion on the basis of the facts that this not the type of error that would be apparent to an individual since the date itself does not refer to the date of a previous discharge or service but was fixed for the purpose of giving credit for prior service as if he had entered upon active duty on that particular date. The additional pay per pay period would not have been sufficient to put the officer on notice that the error had occurred. These conclusions are borne out by the determination of the Department of the Navy that Commander McCord was acting in good faith in accepting the money and further that the overpayments were not the result of his own action or fault.

Commander McCord sought to obtain relief through appeal to the Board for the Correction of Military Records but that application was not successful. Accordingly his only recourse is to appeal to the Congress for relief as provided in the amended bill and the committee has determined that he is equitably entitled to such relief. Accordingly, it is recommended that the bill be considered favorably.

Attached hereto and made a part hereof are (1) a letter dated September 23, 1969 from the Department of the Navy, and (2) a letter dated July 19, 1967 from the Comptroller General.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., September 23, 1969.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your letter of February 3, 1969, to the Secretary of the Navy requesting comment on H.R. 2481, a bill for the relief of Comdr. John W. McCord.

This bill would relieve Comdr. John W. McCord of all liability to repay to the United States the sum of \$4,724.87, representing overpayments of active duty compensation received by him for the period June 4, 1948, through February 14, 1967, while he was employed by the U.S. Navy.

The bill indicates that the overpayments in this case were occasioned by a misapplication of the act of July 31, 1894 (formerly 5 U.S.C. 62; now repealed) or the so-called "Dual Employment Law." In fact, the overpayments resulted from an administrative error in overcrediting service for pay purposes to Commander McCord and the computation of his pay on the basis of the overcredited service, while Commander McCord was serving on active duty in the Navy.

The records of this Department show that Commander McCord served as an enlisted man in the Naval Reserve from September 16, 1942, to June 22, 1944, a period of 1 year, 9 months, and 7 days. He attended the U.S. Naval Academy from June 23, 1944, to June 3, 1948. When he entered active duty as an officer on June 4, 1948, Commander McCord's pay entry base date should have been established as August 27, 1946. However, through administrative error, his pay entry base date was erroneously established as January 11, 1945.

This error was not discovered until Commander McCord requested transfer to the retired list upon completion of 20 years' service. As a result of the error, Commander McCord had received overpayments of active duty compensation, amounting to \$4,724.87.

Although the total overpayment in this case is a substantial sum, it is one which was built up over a period in excess of 18 years. The overpayment apparently was the result of administrative error and Commander McCord's mistaken belief that his pay entry base date had been correctly established upon his graduation from the U.S. Naval Academy and his entrance on active duty as a commissioned officer. Information available to the Department of the Navy affords no reason to believe other than that Commander McCord was acting in good faith in this belief and that the overpayments were without fault on his part.

For this reason, the Department of the Navy would interpose no objection to the enactment of H.R. 2481.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

For the Secretary of the Navy.

Sincerely yours,

JOHN D. H. KANE, JR.,
Captain, U.S. Navy, Deputy Chief.

S.R. 1052

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., July 19, 1967.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
 House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your letter of June 9, 1967, requesting our views on H.R. 10462, a bill for the relief of Comdr. John W. McCord.

The bill would relieve Commander McCord of his liability to repay to the United States the sum of \$4,724.87 stated to represent overpayments of active duty compensation received by him for the period June 4, 1948, through February 14, 1967, "while he was employed by the United States Navy, such overpayments having been made through administrative error in violation of the Act of July 31, 1894, as amended (5 U.S.C. 62)," and received in good faith by him. Also, the bill would authorize and direct the Secretary of the Treasury to pay to Commander McCord an amount equal to the sum of any amounts received or withheld from him on account of such overpayments.

The statement in the bill indicating that the overpayments arose while the officer was employed in a civilian capacity in violation of the act of July 31, 1894, as amended, 5 U.S.C. 62—this act, commonly known as the Dual Office Act, was repealed effective December 1, 1964, by section 402(a) (7) of the Dual Compensation Act, approved August 19, 1964, Public Law 88-448, 78 Stat. 492—is factually incorrect. The record before us shows that Commander McCord was serving on active duty in the Navy during the period mentioned in the bill and that the overpayments of active duty pay arose because his pay entry base date for longevity pay purposes was erroneously established.

The record shows that Commander McCord had active and inactive service as an enlisted man in the U.S. Naval Reserve from September 16, 1942, to June 22, 1944, a period of 1 year, 9 months and 7 days; that he served as a midshipman in the U.S. Naval Academy from June 23, 1944, to June 3, 1948; and that he entered on active duty in the Navy as an officer on June 4, 1948, and continued on active duty in that capacity until July 1, 1967, when he was transferred to the retired list with the grade of commander and with retired pay of that grade pursuant to 10 U.S.C. 6323.

When Commander McCord entered on active duty as an officer on June 4, 1948 (following his service as a midshipman in the U.S. Naval Academy) his pay entry base date, computed on the basis of his creditable service as an enlisted man in the U.S. Naval Reserve (1 year, 9 months and 7 days), should have been established as August 27, 1946. However, his pay entry base date was erroneously established as January 11, 1945. In processing the officer's request for transfer to the retired list, the Navy discovered the error and on February 14, 1967, the Chief of Naval Personnel established his correct pay entry base date as August 27, 1946. As a result of the error, he had received overpayments of basic pay (including aviation pay for certain periods) for the period June 4, 1948, to August 26, 1966, totaling \$4,724.87, the amount stated in the bill.

The indebtedness has been partially liquidated by collection of \$52.08 for the longevity overpayment for the period July 1, 1966, to August 26, 1966, as shown on the officer's pay record closed June 30, 1967. Also, such pay record contains a remark to the effect that collection of the balance at the rate of \$50 a month from the officer's retired pay is being held in abeyance pending decision on his congressional and Board for Correction of Naval Records requests for the relief of his indebtedness. We have been informally advised that Commander McCord has an application pending before the Board for Correction of Naval Records for correction of his pay entry base date. See 10 U.S.C. 1552. In view of this application, your Committee may wish to defer further action on H.R. 10462 pending the decision of the correction board.

We do not view with favor legislation such as H.R. 10462 which grants preferential treatment to an individual over other individuals similarly situated. Other persons have been required to refund overpayments received because of erroneous pay entry base dates. On the record before us we find no special equity in Commander McCord's case which would warrant our recommending favorable consideration of the bill. The question of whether relief should be granted in this case, however, is, of course, for determination by the Congress on the basis of the facts and circumstances presented.

If H.R. 10462 is to receive favorable consideration, we suggest that the language in section 1 of the bill, following the word "duty" (line 6) be deleted and that there be substituted therefor the words "pay received by him for the period June 4, 1948, through August 26, 1966, as a result of administrative error in establishing his pay entry base date, which payments were received by him in good faith."

In our review of Commander McCord's pay records we discovered an additional overpayment to him in the amount of \$120 resulting from a duplicate credit of aviation pay for the month of June 1954. This additional indebtedness did not arise because of Commander McCord's erroneous pay entry base date, and is not included in the amount mentioned in the bill. If your committee wishes to grant relief from this overpayment, the language of the bill should be adjusted accordingly.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.







